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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/536,509	06/24/2005	Claude Mathieu	001227.0091	6908
69095 7590 11/10/2008 STROOCK & STROOCK & LAVAN, LLP 180 MAIDEN LANE NEW YORK, NY 10038				
EXAMINER				
PHILOGENE, PEDRO				
ART UNIT		PAPER NUMBER		
3733				
MAIL DATE		DELIVERY MODE		
11/10/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/536,509

Applicant(s)

MATHIEU ET AL

Examiner

Pedro Philogene

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,5,7-11,14-16,24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24 and 25 is/are allowed.
- 6) ☒ Claim(s) 1,3,5,7-11,14-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Specification

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 5, 10, 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dahners (6,955,677).

With respect to claim 1, Dahners discloses a bone fixation comprising a body (60) having an upper surface and a bottom surface wherein the body is formed of a plastic material; as set forth in column 6, lines 26-29; at least four openings (one or more) extending from the upper surface through the bottom surface each of which openings is configured to receive a bone fixation device (10); as set forth in column 6, lines 44-62; at least four peripheral perimeter each of which is made of in the form of a metallic rectangular die (85, 91,105,107) wherein each peripheral perimeter is rigidly inserted into one of the multiple openings; as best seen in the Figures, and as set forth in column 8, lines 44-67.

Although Dahners discloses one or more apertures in the plate, it is noted that Dahners did not teach of at least four openings; as claimed by applicant. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Dahners by duplicating the parts, since it as been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

As to the shape of the perimeter being polygonal, this configuration of the perimeter is nothing more than one of numerous configurations one of ordinary skill in the art would have found obvious for the purpose of providing mating surfaces in the perimeter of Dahners. In re Dailey, 149 USPQ 47 (CCPA 1976).

Claims 7-9 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Dahners (6,955,677) in view of Frigg et al. (6,206,881).

Although Dahners teaches of plastic material, it is noted that Dahners did not teach of the plastic being PEEK and reinforcing material consisting of Carbon fibers and Peek fibers; as claimed by applicant. However, in similar art, Frigg et al provides the evidences of the use of a plate made of plastic that is PEEK and reinforced with carbon fibers and Peek fibers so that excellent geometric locking is achieved.

Therefore, given the teaching of Frigg et al, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Dahners, as taught by Frigg et al, so that excellent geometric locking is achieved.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dahners (6,955,677) in view of Eitenmuller et al. (5,108,399).

It is noted that the above combination of reference did not teach of elements that are covered by a coating wherein the coating being selected from the group consisting of titanium and hydroxylapatite; as claimed by applicant. However, in similar art, Eitenmuller et al provide the evidence of a plate element coated with titanium and hydroxylapatite to ensure rapid incorporation on the bone surface.

Therefore, given the teaching of Eitenmuller et al, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Dahners, as taught by Eitenmuller et al, to ensure rapid incorporation of the bone surface.

Allowable Subject Matter

Claims 24, 25 are allowed.

Response to Amendment

Applicant's arguments, see Remarks, filed 7/30/08, with respect to the rejection(s) of claim(s) 1-22 under 102/103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Dahners/Frigg et al.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

5,976,141

11-1999

Haag et al

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Pedro Philogene/
Primary Examiner, Art Unit 3733
November 5, 2008